

In the Supreme Court of the United States

OCTOBER TERM, 1973

ASTOL CALERO-TOLEDO, SUPERINTENDENT OF POLICE,
ET AL., APPELLANTS

v.

PEARSON YACHT LEASING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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ET AL., APPELLANTS

v.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTIONS PRESENTED

The United States will discuss the following questions:

1. Whether a statute authorizing seizure without a prior adversary hearing (but with an opportunity for a prompt post-seizure hearing) of property that is subject to forfeiture because of its use for unlawful purposes is unconstitutional on its face under the Fifth Amendment.

(1)

2. Whether the forfeiture of a vehicle or vessel used by a lessee for an unlawful purpose deprives the owner of property without due process or constitutes a taking without just compensation, where the owner was not a participant in and did not know of the unlawful use to which it was put.

INTEREST OF THE UNITED STATES

The district court has held unconstitutional a Puerto Rican statute providing for forfeiture of vehicles or vessels used for unlawful purposes by one in lawful possession thereof. It found two defects in the statute: (1) Its failure to provide notice and an adversary hearing prior to seizure; and (2) its authorization of forfeiture when the owner-lessor was neither aware of nor involved in the unlawful act resulting in the forfeiture.

Like most state legislatures, Congress has, beginning in 1789, enacted a considerable number and variety of laws providing for seizure and forfeiture; these are similar to the Puerto Rican statutes in various respects. Such laws provide an important tool in the collection of revenue, control of imports, regulation of firearms, gambling, and drug abuse, and other federal law enforcement purposes. Government policy and programs in such areas have been developed in light of the long history of such forfeiture laws and the numerous decisions of this Court sustaining their validity. *E.g.*, H. Rep. No. 1054, 76th Cong., 1st Sess., p. 3. Because this Court's decision concerning the constitutionality of the Puerto Rican statutes could have an important bearing on the validity and

application of the various federal forfeiture statutes, the United States has a substantial interest in the outcome of this case. A representative collection of federal forfeiture statutes that could be affected by the Court's decision in this case is set forth in the appendix to this brief, *infra*.

STATEMENT

We add only the following to the statement of the case in the appellants' brief. Under the lease between the appellee, Pearson Yacht Leasing Company, and the lessees of the boat, the latter were to use the yacht only for "any and all legal purposes" (App. 10),¹ to obtain insurance for Pearson against "loss" of the yacht "sustained in any manner whatsoever" (App. 8), and to assume all liability for and save Pearson harmless from "all loss imposed by law resulting from the use or operation" of the yacht (App. 9). The lease also provided that "forfeiture" of the yacht was not to diminish or discharge the obligation of the lessees to pay rent (App. 9) and that, except upon the written consent of Pearson, the yacht was to be based at the home port of the lessees, specified as a Puerto Rican address (App. 12, 14).

After the lessees had defaulted on the lease agreement, Pearson learned of the seizure, resulting from the discovery of marijuana on board, on October 19, 1972, when Pearson alleges that it unsuccessfully attempted, in a manner not disclosed by the record, to regain possession of the vessel from the lessees (App. 3; see

¹ "App." refers to appellants' separately printed appendix.

App. 10, 28). Pearson did not thereafter file suit in Superior Court as provided in 34 L.P.R.A. 1722(a) (Br. App. 1a).² Rather, on November 6, 1972—more than fifteen days later—Pearson filed suit in the United States District Court for the District of Puerto Rico under 28 U.S.C. 1343, seeking to compel the return of the yacht, to have 24 L.P.R.A. (Cum. Supp. 1972) 2512(a)(4) and (b) and 34 L.P.R.A. 1722 declared unconstitutional as applied to Pearson, and to enjoin enforcement of these statutes against its property. Pearson claimed that the statutes were unconstitutional because they did not require that notice be given to the owner of seized property and because they authorized forfeiture of property of “an innocent party to the criminal act for which the property was seized and subject to forfeiture” (App. 4-5). On Pearson’s motion a three-judge court was convened, in accordance with 28 U.S.C. 2281.

The three-judge district court made two basic findings.³ The court held that the failure of the forfeiture statute to provide for a hearing prior to seizure was inconsistent with due process under principles enunciated in this Court’s decision in *Fuentes v. Shevin*, 407 U.S. 67 (App. 36-39). (The court, however, did not specify the issues to be considered at such a pre-

² “Br. App.” refers to the appendix included in appellants’ brief. “Br.” refers to appellants’ brief.

³ The court considered it unnecessary to reach the question whether failure to provide proper notice to the owner before forfeiture may violate due process standards, because it determined that, “[f]rom the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given” (App. 36).

seizure hearing.) In addition, insofar as the challenged statutes authorized the forfeiture of property "of a totally innocent person" in Pearson's situation, the court held that they took property without just compensation in violation of the Constitution⁴ and of what it understood to be the teachings of *United States v. United States Coin & Currency*, 401 U.S. 715 (App. 35-36). Accordingly, the court declared 24 L.P.R.A. 2512(a)(4) and 34 L.P.R.A. 1722(a) unconstitutional and issued a permanent injunction against the enforcement of the challenged provisions (App. 39, 45). The court also found that, by virtue of its holding, Pearson would be entitled to be paid the appraised value of the vessel at the time of its seizure (\$19,800; App. 28) plus 6 percent interest per annum under 34 L.P.R.A. 1722(d), which authorizes such damages for a person aggrieved by an illegal seizure (App. 40).

In addition to the facts established by the stipulated record in this case, there are a number of possibly pertinent factual matters not covered by the record. Thus, the record does not reveal the extent to which, if at all, Pearson either had, sought, or should have known information about the background or any possible criminal record of the lessees. It is also not clear whether

⁴The statutes were challenged as violating the Fifth and Fourteenth Amendments (App. 5), but the court did not specify which it relied upon. Compare *Fornaris v. Ridge Tool Co.*, 400 U.S. 41. It has been held that, to the extent that the Constitution applies directly to the laws of Puerto Rico, they are subject to the Fifth Amendment. *Arroyo v. Puerto Rico Transp. Auth'y*, 164 F.2d 748, 750 (C.A. 1). But see *Balsac v. Porto Rico*, 258 U.S. 298, 304-305; *Stagg, Mather & Hough v. Descartes*, 244 F.2d 578, 582-583 (C.A. 1). See also 48 U.S.C. 731d, 737.

the lessees were arrested at the time the marijuana was discovered on the vessel on May 6, 1972, or whether the police had a warrant or probable cause to arrest or to search or seize the vessel or anything in it at that time. The status or location of the vessel between that date and its seizure on July 11, 1972, is not disclosed by the record, nor is the reason for the timing of the seizure. The record does not establish when the appellants first learned of Pearson's existence or relationship to the seized vessel. Finally, it is not known whether Pearson has sought to pursue its remedies against the lessees under the lease, whether it intends to do so, or whether such remedies would be likely to make Pearson whole.⁵

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Forfeiture statutes are important and effective tools in law enforcement and regulation. While the ancient conceptual basis for forfeitures may lack contemporary vitality, forfeitures have in recent history come to serve a variety of important governmental purposes in connection with such diverse matters as revenue collection, import control, and the regulation of firearms, liquor, and drug abuse. Statutes authorizing seizure and forfeiture generally represent an alternative or supplemental sanction and means of deterrence of violations of the criminal laws.

Moreover, by removing from circulation property that has been used—and may again be used—in viola-

⁵ While these facts are perhaps not essential for evaluation of the facial validity of the statute, a determination of its unconstitutionality as applied to Pearson could not properly be made without considering these matters.

tion of the law, forfeiture provisions foster the purposes of the underlying prohibitions or regulations.⁶ Thus, the further use of a vehicle or vessel for illicit transportation was a danger Congress recognized from past experience and specifically sought to prevent when, in 1939, it enacted 49 U.S.C. 781 (App., *infra*, p. 51), which the district court found (App. 34, n. 12) to be the model for the Puerto Rican forfeiture law.⁷

⁶ For example, the liquor prohibition statute (41 Stat. 315), from which evolved the present general internal revenue forfeiture statute (26 U.S.C. 7302 (App., *infra*, p. 50)), was designed to remove from circulation both liquor and property used in its manufacture, without regard to criminal conviction of the offender. Had it been possible to seize and destroy all liquor and the property used to make it, the prohibition laws would have been effective even if no offender were ever actually convicted.

⁷ The committee reports stated:

"The importance of this type of forfeiture laws is indicated by the fact that it has been the tendency of Congress in recent years to enlarge and increase the laws relating to the forfeiture of vessels, vehicles, and aircraft. Thus, the act of June 19, 1934 (48 Stat. 1116), amended section 938 of the Revised Statutes to make discretionary with the courts the former mandatory provisions for the release under bond of vessels seized for violations of the customs laws pending judicial proceedings looking toward forfeiture. This amendment was made necessary by the fact that vessels seized for violations of the customs laws and released on bond frequently returned immediately to the smuggling traffic. Instances were not uncommon of vessels being seized three or four times for different violations and being released on bond each time before the first forfeiture proceeding came up for trial. ***

"The present legislation is necessary because there are no laws which subject to forfeiture vessels, vehicles, and aircraft employed to facilitate violations of the counterfeiting laws or the National Firearms Act and because the statutory provisions for forfeiting vessels, vehicles, and aircraft used to facilitate vio-

In addition to preventing further illicit use of a conveyance, seizure and forfeiture provide a means of imposing an economic penalty against those who use conveyances to break the law, thereby making law-breaking unprofitable.* Seizure and forfeiture statutes also help to compensate the government for the cost of apprehending law violators or otherwise administering its regulatory programs, and provide a method of obtaining security for debts, penalties and fines owed to the government. See *Helvering v. Mitchell*, 303 U.S. 391, 400-401; *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232, 237.

2. In authorizing seizure of property subject to forfeiture without prior notice or adversary hearing, the

lations of the narcotic laws are entirely inadequate. It is made doubly necessary, because not infrequently the means of transportation employed in violations of the laws involved in the present bill are peculiarly adapted to such type of work as, for instance, high-speed powerboats, fast cars with secret compartments, and aircraft. If such means of transportation are not forfeited, they will be readily available for future violations. * * * (H. Rep. No. 1054, *supra*, at pp. 2-3; S. Rep. No. 926, 76th Cong., 1st Sess., p. 2.)

* As Congress has repeatedly stated in enacting forfeiture provisions:

"It has been the experience of our enforcement officers that the best way to strike at commercialized crime is through the pocketbooks of the criminals who engage in it. By decreasing the profits which make illicit activity of this type possible, crime itself can also be decreased. Vessels, vehicles, and aircraft may be termed the 'operating tools' of dope peddlers, counterfeiters, and gangsters. They represent tangible major capital investments to criminals whose liquid assets, if any, are frequently not accessible to the Government." (H. Rep. No. 1054, *supra*, at p. 2; S. Rep. 926, 76th Cong., 1st Sess., p. 2. See also H. Rep. No. 2751, 81st Cong., 2d Sess., p. 3; S. Rep. No. 1755, 81st Cong., 2d Sess., p. 3.)

Puerto Rican forfeiture statutes involved in this case are similar to virtually every other federal and state forfeiture statute. The district court's holding that the Constitution requires prior notice and a hearing before forfeitable property may be seized is an erroneous extension of this Court's decision in *Fuentes v. Shevin*, 407 U.S. 67. Seizure pursuant to a forfeiture statute does not come within the rationale of *Fuentes* because such statutes do not abdicate state control over state power or permit private parties to serve their private interests by unilaterally invoking state power; a state official participates in the decision to make the seizure and evaluates the need for it. In addition, a seizure for forfeiture is very similar to an evidentiary seizure pursuant to a warrant and may properly be comprehended within the exception recognized in *Fuentes* for such seizures.

Pre-hearing seizure of forfeitable property was recently upheld by this Court in *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363. Any requirement of prompt post-seizure judicial proceedings established by that decision would be satisfied by the Puerto Rican statute, assuming such requirements are applicable when the seized property is not arguably protected by the First Amendment.

In any event, Pearson, as a lessor, had no right to immediate possession of the vessel when it was seized, and it thus has no standing to claim that the seizure deprived it of property without due process of law.

3. Forfeiture statutes vary in their treatment of the relationship of the owner of the property to the act

resulting in forfeiture. In some instances a claim of "innocence" by the owner is impossible because the legislature has made ownership or possession of the type of property involved unlawful or has provided that no private property rights may exist in such property. Even where the forfeitable status of property derives from its use in a particular manner rather than its intrinsic character, the relevance of the owner's relationship to the use resulting in the forfeiture may depend upon the circumstances.

Where the owner is wholly incapable of preventing its unlawful use, as where the property was improperly used by one who stole it or whose possession of it was otherwise unlawful or unauthorized, most statutes either explicitly or by construction would not require forfeiture. However, where the improper use was made by one to whom the owner had entrusted the property (*e.g.*, lessee, bailee, conditional vendee), the statutes vary. Some would not require forfeiture if the owner had no knowledge of or involvement in the forfeiting act, whereas others contain no such exemption, thereby in effect imposing strict liability on the owner. The Puerto Rican statute and many federal forfeiture statutes are in the latter category.

Such imposition of strict liability on the owner furthers the basic purposes served by forfeiture statutes by obliging property owners to take greater care in deciding to whom they will entrust their property and by causing them to take added precautions against its improper use. As a reasonable means of achieving a legitimate end, the application of forfeiture statutes

in such circumstances does not result in a deprivation of property without due process or a taking of private property for public use without just compensation. Accordingly, their constitutionality has been repeatedly sustained by this Court.

The district court erroneously concluded that the prior decisions concerning the constitutionality of forfeiture statutes as applied to the property of one in Pearson's situation had been overruled by this Court's decision in *United States v. United States Coin & Currency*, 401 U.S. 715. The issue presented here was not before the Court in *Coin & Currency* and the Court expressly disavowed any reconsideration of its prior decisions on the subject. Nothing said in *Coin & Currency* or in any other decision of this Court undermines the continuing vitality of this Court's long line of decisions demonstrating the validity of the application of the Puerto Rican forfeiture statute in the present case.

Any potential constitutional problems arising from the application of a forfeiture statute to the property of an "innocent" owner in Pearson's position are eliminated where there exists a judicial or administrative procedure for remission or mitigation of forfeitures. Such procedures exist with respect to nearly all federal forfeiture statutes, although they are apparently not available under the Puerto Rican forfeiture statute. However, we do not believe that the availability of such procedures is essential to the validity of the statute, and this Court's prior decisions have not rested on such a basis.

Finally, we submit that Pearson is not in a position to assert a deprivation of property by the operation of the forfeiture statute. Under the lease agreement, Pearson has remedies against the lessee which, if pursued, would fully recompense it for the value of the vessel. The real impact of the forfeiture is on the lessees. If the forfeiture were not sustained, however, the lessees would be relieved of a legislatively imposed consequence of their wrongdoing, and the purposes of the forfeiture statute would be disserved.

ARGUMENT

I. DUE PROCESS DOES NOT REQUIRE AN ADVERSARY HEARING PRIOR TO SEIZURE OF PROPERTY SUBJECT TO FORFEITURE FOR HAVING BEEN USED IN THE COMMISSION OF AN ILLEGAL ACT

A. THE PROCEDURAL SETTING OF SEIZURES OF FORFEITABLE PROPERTY

The Puerto Rican forfeiture statute, like most forfeiture statutes enacted by Congress or by the states, provides, as the first step toward forfeiture, that the property subject to forfeiture be seized prior to the judicial forfeiture proceedings. Particular procedures and standards relating to different aspects of the forfeiture process vary among the Puerto Rican and the various federal forfeiture statutes.

1. Initial authorization of seizure

The Puerto Rican statute, based on the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, provides that the seizure shall be made "by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent," acting through their delegates. 34 L.P.R.A. 1722(a). While some federal forfeiture

statutes provide for the issuance of a warrant or other process for seizure of forfeitable property and may expressly require "cause" or "probable cause" before a seizure may be made (*e.g.*, 19 U.S.C. 1595a; 21 U.S.C. 881(b); 26 U.S.C. 7302; *cf.* 18 U.S.C. 3113), the majority, like the Puerto Rican statute, do not. A requirement of "cause," however, has been read into some federal forfeiture statutes by judicial construction. *E.g.*, *United States v. Troiano*, 365 F. 2d 416, 418 (C.A. 3), certiorari denied, 385 U.S. 958 (construing 49 U.S.C. 781-782); *cf.* *Burge v. United States*, 342 F. 2d 408, 414 (C.A. 9), certiorari denied, 382 U.S. 829 (same).

In many cases the act resulting in forfeiture is a crime and the grounds on which seizure and forfeiture are authorized would also constitute grounds for an ordinary seizure of property for evidentiary purposes, either with or without a warrant.⁹ See generally 18 U.S.C. 3103a; Fed. R. Crim. P. 41(a). (The record does not permit any definitive statements to be made as to whether an evidentiary seizure, with or without a warrant, would have been justified here.) In other instances, however, seizure may be authorized under a forfeiture statute even though, due to absence of criminal intent or for other reasons (*cf.* *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232), a seizure for use in criminal proceedings would not be appropriate. See also 21 U.S.C. 334(a).

⁹ Some forfeiture statutes require the conviction of the person using the property before the forfeiture can become effective. *E.g.*, 16 U.S.C. 171; *cf.* 18 U.S.C. 3611.

2. *Necessity for judicial proceedings*

Some statutes, like the Puerto Rican enactment, provide for forfeiture of property without judicial proceedings if the seizure is not challenged within a specified time, but many federal statutes require institution of judicial condemnation proceedings to forfeit the property. *E.g.*, 19 U.S.C. 1610 (condemnation proceedings required in every case where value of property seized under customs laws exceeds \$2500); 26 U.S.C. 7323 (same as to forfeitures under Internal Revenue Code); compare 19 U.S.C. 1607, *et seq.* (summary forfeiture proceedings under customs laws where property value is \$2500 or less); 26 U.S.C. 7325 (same as to goods, wares or merchandise subject to forfeiture under Internal Revenue Code).

3. *Duration of forfeiture proceedings*

Few statutes specify time limits within which forfeiture proceedings must be commenced or completed after seizure, but such time limits have been read into some forfeiture statutes. *E.g.*, *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363; cf. *Sarkisian v. United States*, 472 F. 2d 468 (C.A. 10), certiorari denied, No. 73-252, October 23, 1973.

4. *Possession of property pending final decision*

Like the Puerto Rican statute, some forfeiture statutes provide for the return of the seized property to the owner pending disposition of the condemnation proceedings. *E.g.*, 18 U.S.C. 3617(d) (App., *infra*,

pp. 43-44); cf. 19 U.S.C. 1614.¹⁰ Even in the absence of a statutory obligation to do so, moreover, the United States may in appropriate cases enter into court-approved stipulations permitting a bond to be substituted for seized property in forfeiture cases. Cf. Rule E(5), Fed. Supp. R. Civ. P.

B. THE DISTRICT COURT MISAPPLIED *FUENTES V. SHEVIN*

Relying essentially upon *Fuentes v. Shevin*, 407 U.S. 67, the district court found the Puerto Rican forfeiture statute unconstitutional "on its face" because it provides no procedure "whereby the seizure can be contested before it is made" (App. 37). This conclusion misconceives the thrust of *Fuentes* by imposing Fifth Amendment restrictions against deprivation of property on seizures otherwise lawful under the Fourth Amendment; it also undermines the legitimate exercise of a state's police power to apprehend and convict lawbreakers, to regulate prohibited activity, and to collect revenues and penalties.

1. *Seizures of forfeitable property are not covered by the rationale of Fuentes*

It is well established that due process does not require an adversary hearing "in every conceivable

¹⁰ A general provision for release of seized property upon the posting of a bond (28 U.S.C. (1940 ed.) 751) was omitted in the codification of Title 28 in 1948 as being covered by 19 U.S.C. 1605, *et seq.* (see 62 Stat. 993; H. Rep. No. 308, 80th Cong., 1st Sess., p. A238), although those provisions are actually more limited in scope.

case of government impairment of private interest.” *Cafeteria Workers v. McElroy*, 367 U.S. 886, 894. The procedures required for due process in a given circumstance depend upon the government function involved as well as on the private interest that may be affected by governmental action. *Id.* at 895; *Goldberg v. Kelly*, 397 U.S. 254, 263; cf. *Morrissey v. Brewer*, 408 U.S. 471.

Accordingly, this Court has held in a variety of circumstances that governmental seizure or control of private property in advance of the opportunity for an adversary hearing is consistent with the demands of due process. Such circumstances have included seizure and destruction of unwholesome food (*North Am. Cold Storage Co. v. City of Chicago*, 211 U.S. 306), attachment of property of non-residents for jurisdictional purposes (*Ownbey v. Morgan*, 256 U.S. 94), creation of liens on bank stock (*Coffin Bros. & Co. v. Bennett*, 277 U.S. 29), seizure of property to pay taxes (*Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589), state custody of inactive bank accounts (*Anderson Nat'l Bank v. Lockett*, 321 U.S. 233), control of failing savings and loan associations (*Fahey v. Mallonee*, 332 U.S. 245), seizure of harmless articles bearing misleading labels (*Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594), or seizure of allegedly obscene imported matter (*United States v. Thirty-Seven (37) Photographs, supra*). Most of the instances in which deferral of a hearing has been sustained have involved deprivation of property, rather than liberty,

reflecting this Court's observation in *Phillips v. Commissioner, supra*, 283 U.S. at 596-597:

Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate. * * * Delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be immediately satisfied. * * *

Of course, where property is taken for essentially private purposes, rather than to serve directly any important governmental purpose, the justification for deferral of a hearing is lessened. That was the situation in *Fuentes* and its precursor, *Sniadach v. Family Finance Corp.*, 395 U.S. 337.

Fuentes involved the validity of state statutes permitting creditors, by way of replevin actions, "to seize goods allegedly wrongfully detained—not wrongfully taken—by debtors." 407 U.S. at 79. All that was required to justify immediate seizure under those statutes was the creditor's bare assertion that he was entitled to the property; no pre-seizure notice or hearing was required. The Court found that those statutory procedures resulted in a deprivation of property without due process by "failing to provide for hearings 'at a meaningful time'"—i.e., prior to the seizure (407 U.S. at 80). As the Court pointedly observed (*id.* at 93):

The statutes * * * abdicate effective state control over state power. Private parties, serving their own private advantage, may unilater-

ally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. * * *

Seizure under most forfeiture statutes stands on a totally different footing. These statutes involve the exercise of state power to achieve critical public interests and are not aimed at fostering the interests of private litigants. Thus, summary seizure of a vehicle or vessel may be proper in order to assure *in rem* jurisdiction over it for the purpose of imposing the penalty of forfeiture or to prevent its further unlawful use. *Dobbins's Distillery v. United States*, 96 U.S. 395; *One Lot Emerald Cut Stones v. United States*, *supra*, 409 U.S. at 237.¹¹ Accordingly, seizures for forfeiture come within the "extraordinary situations" exception to the requirement of pre-seizure notice and hearing recognized in *Fuentes*. See also *Boddie v. Connecticut*, 401 U.S. 371, 379. As the Court stated in *Fuentes*, a prior hearing may be dispensed with if (407 U.S. at 91):

the seizure has been directly necessary to secure an important governmental or general

¹¹ Some statutes authorizing seizure and forfeiture are part of a system of control of imports and entry across national borders (e.g., 19 U.S.C. 1595a), a function that may be subject to less stringent constitutional restrictions than is purely domestic regulation. See *Carroll v. United States*, 267 U.S. 132, 154; *United States v. 12 200-Ft. Reels of Super 8MM Film*, No. 70-2, decided June 21, 1973, slip op., pp. 2-3; cf. *Almeida-Sanchez v. United States*, No. 71-6278, decided June 21, 1973, slip op., pp. 6-7.

public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. * * *

The seizure in this case appears to have satisfied most of the foregoing criteria. It secured important governmental interests, and it was initiated by a government official responsible for determining under the standards of a narrowly drawn statute that the seizure was necessary and justified in the particular circumstances. Here the seizure guaranteed Puerto Rico *in rem* jurisdiction over the vessel for proceedings based on its use in violation of the Puerto Rican Controlled Substances Act (24 L.P.R.A. (Cum. Supp. 1972) 2512), thereby serving a legitimate public interest in assuring its availability as a fine for wrongdoing and preventing its further illicit use.

Failure to seize the vessel could have resulted in its removal by persons who were unknown to the police but possibly involved in the illegal transportation of the marijuana.¹² Likewise, if at the time of the seizure the users of the vessel were free (the record does not reveal whether they had been admitted to bail), there was the possibility that they might have removed the vessel to a jurisdiction beyond the reach

¹² The record does not reveal the reasons for the timing of the seizure in this case nor whether it would have been feasible to make the seizure sooner than it was made.

of Puerto Rican process. Finally, as appellee stipulated (App. 23), the seizure was duly authorized by the Puerto Rican Superintendent of Police pursuant to the provisions of 24 L.P.R.A. 2512 (a)(4) and (b), which incorporate the provisions of Puerto Rico's Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. 1722.

2. Seizures of forfeitable property are within the exception recognized in Fuentes for evidentiary seizures

In addition to the Court's recognition in *Fuentes* of the above-described category of cases where notice and opportunity for a hearing need not precede a seizure or other deprivation of property, the Court specifically noted that seizure of property under a warrant was an "entirely different" situation (407 U.S. at 93-94, n. 30):

The seizure of possession under a writ of replevin is entirely different from the seizure of possessions under a search warrant. First, a search warrant is generally issued to serve a highly important governmental need—*e.g.*, the apprehension and conviction of criminals—rather than the mere private advantage of a private party in an economic transaction. Second, a search warrant is generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the State will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the State

will not abdicate control over the issuance of warrants and that no warrant will be issued without a prior showing of probable cause. Thus, our decision today in no way implies that there must be opportunity for an adversary hearing before a search warrant is issued * * *.

The issuance of a warrant, moreover, is not essential to exclude a seizure from the operation of the *Fuentes* principle, for this Court has reiterated since *Fuentes* the long-settled rule that, at least as to contraband and vehicles or other mobile conveyances, seizures may lawfully be made even in the absence of a warrant—and, *a fortiori*, the absence of any prior notice or opportunity to be heard. *Cady v. Dombrowski*, No. 72-586, decided June 21, 1973; see, *e.g.*, *Chambers v. Maroney*, 399 U.S. 42.¹³

These reasons apply equally to seizures for forfeiture, some of which may indeed be undertaken pursuant to a warrant (see pp. 12-13, *supra*), in which event prior notice and an adversary hearing would be un-

¹³ No question has been raised or decided in this case concerning the applicability of the Fourth Amendment, including the warrant requirement, to seizures for forfeiture. Although it has long been understood that such seizures ordinarily may be made without a warrant (*cf. Cooper v. California*, 386 U.S. 58), a three-judge district court has recently held that such seizures are subject to essentially the same warrant requirements as are evidentiary searches, and that a federal forfeiture statute (49 U.S.C. 782) should be construed as incorporating the warrant requirements of the Fourth Amendment. *Melendez v. Shultz*, Civ. No. 72-3230-F (D. Mass.), decided March 30, 1973, appeal dismissed, No. 73-1173 (C.A. 1), decided November 5, 1973. We are presently considering whether to seek further review in that case.

necessary. Indeed, in many cases the circumstances that would subject property to forfeiture involve criminal violations, and the property would be subject to seizure for evidentiary purposes without a prior hearing and perhaps without a warrant. At least in such cases, it would be illogical and impractical to hold that a forfeiture would be barred because there had been no pre-seizure adversary hearing.

Even where the property is not subject to seizure for evidentiary purposes, substantial governmental interests militate against a requirement of pre-seizure notice and hearing. In many if not most instances, it would not be practical to provide notice and an adversary hearing prior to seizure. Even in circumstances (such as may have existed in this case) where the substance being unlawfully transported has been seized and those in possession of the vehicle or vessel have been arrested, pre-seizure notice to the owner of the vehicle or vessel would alert persons with an interest in it that seizure is imminent, thereby perhaps allowing others not yet apprehended but also guilty of the illicit transportation of the substance (or simply desirous of preventing forfeiture) to remove the unseized vehicle or vessel surreptitiously and escape legal sanctions.¹⁴

The court below failed to indicate the form that the pre-seizure hearing it would require must take, nor did it delineate what elements the government would

¹⁴ The record here does not indicate whether the lessees were arrested or were in custody at the time of the seizure or whether it would have been practicable to obtain a warrant for the seizure of the vessel.

be required to establish in order to justify a seizure. Even assuming *arguendo* that a pre-seizure adversary proceeding were necessary in some circumstances, we submit that the issues should be confined in a manner similar to a preliminary hearing in a criminal case, and that the government should not be compelled to make a plenary showing in support of the forfeiture (particularly if the necessary showing includes a demonstration of the owner's "innocence" of complicity in the unlawful act serving as the predicate for forfeiture).¹⁵

In related circumstances, this Court has recognized that the practical requirements of law enforcement may make it necessary to dispense with some of the formal procedures that might otherwise be required. Thus, the courts have held that law enforcement officers are not powerless to act in situations where they have probable cause to believe that criminal activity is imminent or underway (*e.g.*, *Carroll v. United States*, *supra*), that dangerous substances may be introduced into commerce (*e.g.*, *United States v. Kordel*, 397 U.S. 1), or that there is a possibility that evidence or contraband may be destroyed or removed (*e.g.*, *United States v. Wright*, 449 F. 2d 1355, 1361-1362 (C.A. D.C.)). As this Court stated in *Carroll v. United States*, *supra*, 267 U.S. at 153, it is not always practical to obtain a search warrant to search for contraband in a ship, motor-boat, wagon, or automobile, because such conveyances can readily be moved.

¹⁵ We are not dealing here with any First Amendment interest in the property seized, which might implicate special considerations concerning pre-seizure hearings. See p. 24, *infra*.

The same reasoning should apply to seizures for forfeitures.

C. THE DISTRICT COURT DECISION IS INCONSISTENT WITH THIS COURT'S DECISION IN *THIRTY-SEVEN PHOTOGRAPHS* SUSTAINING SEIZURE IN ADVANCE OF JUDICIAL PROCEEDINGS

In *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363, this Court construed and upheld a statute providing for forfeiture of obscene imported matter notwithstanding the provision for seizure in advance of judicial proceedings.¹⁶ See 19 U.S.C. 1305 (a). The Court held that such seizure was not improper so long as the judicial proceedings required by the statute were commenced within 14 days after the seizure and completed within 60 days after the seizure, unless further delays were caused by actions of the person claiming the seized property. The time limits in the Puerto Rican forfeiture statute (under which the claimant is entitled to give bond and have the property returned within ten days of challenging the seizure) are consistent with the requirements of *Thirty-Seven Photographs*.¹⁷

D. PEARSON, AS LESSOR OR CONDITIONAL VENDOR, LACKS STANDING TO CHALLENGE THE VALIDITY OF THE SEIZURE ITSELF

Even if there were a potential deficiency in the seizure provisions of the Puerto Rican forfeiture laws, Pearson, as opposed to the lessees, does not have standing to assert that the seizure (as opposed to the for-

¹⁶ Although *Thirty-Seven Photographs* was not mentioned in *Fuentes*, it was consistent with *Fuentes* and presumably was not overruled *sub silentio*.

¹⁷ The validity of the instant seizure follows *a fortiori* from *Thirty-Seven Photographs*, as there is here no problem of delay constituting a form of otherwise prohibited censorship, as in that case.

feiture) deprived it of property without due process of law. Although it is stipulated that Pearson was the "lawful owner" of the vessel at the time of the seizure (App. 24), it was not then entitled to possession of it. Hence, the seizure itself did not interfere with Pearson's exercise of any rights it had concerning the vessel. Any deprivation of Pearson's rights was caused not by the seizure but by the subsequent forfeiture, a matter to be discussed below.

Indeed, it may be that a seizure of a vehicle or vessel, when it is being used for illegal purposes by one having possession under a lease or conditional sales contract, actually protects the proprietary interests of the lessor or seller. If not seized, the lawbreakers or their confederates could abscond and remove the vehicle or vessel beyond the control of both the state and the lessor or owner. Even where all the wrongdoers are arrested, the owner's interests would not likely be served if the state were to abandon the property rather than to seize it.

II. FORFEITURE OF A VEHICLE OR VESSEL USED FOR UNLAWFUL PURPOSES BY A LESSEE DOES NOT DEPRIVE AN "INNOCENT" OWNER OF PROPERTY WITHOUT DUE PROCESS OR RESULT IN A TAKING WITHOUT JUST COMPENSATION

A. THE VARIED SUBSTANTIVE PROVISIONS OF FORFEITURE STATUTES

In providing for forfeiture of a vessel or other conveyance used to transport contraband, Puerto Rican law has followed a legislative approach adopted by the First Congress (*e.g.*, 1 Stat. 39) and having ancient historic roots. While it is true that forfeiture laws originally reflected "the fiction that inanimate objects themselves can be guilty of wrongdoing"

(*United States v. United States Coin & Currency*, 401 U.S. 715, 719), Congress and state legislatures have repeatedly found forfeiture proceedings to be a useful and appropriate means for dealing with a variety of law enforcement and regulatory purposes, thus rendering academic the historic rationale of forfeitures. See *McGowan v. Maryland*, 366 U.S. 420, 431-449.

One distinction that is reflected in such statutes is between "*per se*" and "derivative" contraband. See *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699. An item is contraband *per se* if it is subject to forfeiture because the legislature has declared that no private property rights in it may exist, or that its mere possession is unlawful. Cf. *Trupiano v. United States*, 334 U.S. 699, 710; *United States v. Jeffers*, 342 U.S. 48, 53-54. An item is derivative contraband if it is subject to forfeiture because it has been used in connection with some unlawful activity, whether or not involving a crime. Cf. *One Lot Emerald Cut Stones v. United States*, *supra*.

Forfeiture statutes also differ in that under some the forfeiture is mandatory or automatic, occurring when the specified act occurs, whereas under others it is discretionary or conditional and occurs only if and when the state follows specified procedures. See *One 1958 Plymouth Sedan v. Pennsylvania*, *supra*, 380 U.S. at 699. One consequence of this distinction is that, with a mandatory forfeiture, title is said to vest in the state when the forfeiting act occurs and is simply confirmed in the forfeiture or condemnation proceeding, so that the owner is unable after the forfeiting act to convey the

property even to a *bona fide* purchaser. *E.g.*, *Henderson's Distilled Spirits*, 14 Wall. 44, 56-57; *Thacher's Distilled Spirits*, 103 U.S. 679; *United States v. Stowell*, 133 U.S. 1, 18-19.

Forfeiture statutes also vary in their treatment of the owner's alleged lack of involvement in or knowledge of the acts resulting in the forfeiture. Some statutes expressly exclude from their coverage property used by a person other than the owner, when that person's possession was unlawful or acquired by violation of the criminal laws. *E.g.*, 21 U.S.C. 881(a)(4)(B); 49 U.S.C. 782. Even without such an explicit limitation, however, it has long been settled that forfeiture statutes do not apply when the property is in the control of a thief at the time of the forfeiting act, or where the forfeiting act is not done with the "consent or connivance" of either the owner of the property or someone employed or entrusted by the owner (as in this case by means of the lease) with the property. *E.g.*, *Peisch v. Ware (The Palmyra)*, 4 Cranch 347, 364; see *Dobbins's Distillery v. United States*, *supra*, 96 U.S. at 399, 401-402.

Federal forfeiture statutes also differ in their treatment of forfeiting acts done, without knowledge or involvement of the owner, by one who may be legitimately in possession of the property when doing the act. A few such statutes expressly exclude from their scope property used in violation of the law as to which the owner (or person in charge of the property for the owner) was not "a consenting party or privy" (*e.g.*, 19 U.S.C. 1594; 21 U.S.C. 881(a)(4)(A); 46

U.S.C. 961(b); 49 U.S.C. 782; see *United States v. One 1971 Ford Truck*, 346 F. Supp. 613 (C.D. Cal.)), but many do not. Moreover, most federal forfeiture statutes provide for discretionary administrative ¹⁸

¹⁸ With respect to items seized or fines, penalties and forfeitures incurred under the customs or navigation laws, the Secretary of the Treasury is authorized under 19 U.S.C. 1618 to mitigate or remit any such fine, penalty or forfeiture "upon such terms and conditions as he deems reasonable and just," or to order discontinuance of any prosecution relating thereto,

if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture * * *.

Forfeitures under various other federal laws have been made subject to Section 1618. *E.g.*, 21 U.S.C. 881(d); 26 U.S.C. 7327.

The applicable regulations implementing this statute provide that any person who appears to have an interest in the seized property must be given written notice (19 C.F.R. 162.31(a)) of its liability to forfeiture and of his right to petition the Secretary of the Treasury for remission or mitigation of the forfeiture under 19 U.S.C. 1618. A petition for such relief must be filed within 60 days from the date the notice of forfeiture was mailed. 19 C.F.R. 171.12(b). If the seized property was in the possession of another who was responsible for the act which resulted in the seizure, the petitioner must produce evidence explaining the manner in which the other person acquired possession and showing that, prior to parting with the property, he did not know or have reasonable cause to believe that the property would be used in violation of the law or that the violator had a criminal record or a reputation for commercial crime. 19 C.F.R. 171.13(a). These provisions are also extended to those holding chattel mortgages or conditional sales contracts. 19 C.F.R. 171.13(b). If the petitioner is not satisfied with the decision, he may file a supplemental petition within 60 days of the decision. 19 C.F.R. 171.33.

If no petition is filed, or if, after consideration and decision of a petition, it appears that legal proceedings in connection

with the seizure are necessary, the appropriate officer, after appraising the merchandise (19 U.S.C. 1606; 19 C.F.R. 162.43), must prepare a full report of the seizure for the United States Attorney, giving all the relevant facts and circumstances. 19 U.S.C. 1603; 19 C.F.R. 162.32(b), 162.49(a). Upon receipt of such a report, the United States Attorney is required "immediately to inquire into the facts" and, if it appears probable that a forfeiture has been incurred, "forthwith to cause the proper proceedings to be commenced and prosecuted, without delay." 19 U.S.C. 1604. (Facts bearing on the "innocence" of the owner that might be pertinent in a remission proceeding would not be relevant in the judicial forfeiture proceeding, unless, of course, the applicable statute so provides.

Under 19 C.F.R. 171.1(a) no administrative action may be taken on any petition for relief after the case has been referred to the United States Attorney for institution of legal proceedings. Any petitions received in that period must be forwarded to the United States Attorney, and it is the Attorney General who thereafter may allow remission or mitigation under the Secretary's authority. See *United States v. One 1970 Buick Riviera*, 463 F. 2d 1168, 1170, n. 2 (C.A. 5), certiorari denied *sub nom. Nat'l Am. Bank of New Orleans v. United States*, 409 U.S. 980. After the case has been adjudicated, the Secretary of the Treasury reassumes jurisdiction and may still remit or mitigate the forfeiture.

In addition, any person who has an interest in forfeited property may petition the Secretary of the Treasury for remission or mitigation of the forfeiture of the property or any part owned by him up to three months after its sale. See 19 U.S.C. 1613. Upon proof that the petitioner was unaware of the seizure and was in such circumstances as prevented him from knowing of it and that forfeiture was incurred without any negligence or intent to defraud on his part, the Secretary may order the proceeds of the sale or any part thereof restored to the applicant.

Similar regulations apply to the Attorney General's authority to remit or mitigate forfeitures under various laws. See 28 C.F.R. 9.1 *et seq.*

When it enacted 49 U.S.C. 781 in 1939, extending forfeiture provisions to activities not previously covered, Congress also extended the provisions for remission and mitigation to such forfeitures, and it was expressly noted that a petition for re-

or judicial" relief from forfeiture through remission or mitigation if, for example, the forfeiture was incurred "without willful negligence or without any intention" on the part of the owner to violate the law (19 U.S.C. 1618), or if the owner "had at

mission or mitigation is the proper remedy for the property owner when alleviating circumstances exist. See H. Rep. No. 1054, *supra*, at pp. 3-4; S. Rep. No. 926, *supra*, at p. 3.

"With respect to forfeitures decreed for violation of the internal revenue laws relating to liquor, the court is given exclusive jurisdiction to remit or mitigate the forfeiture. 18 U.S.C. 3617(a). Under 18 U.S.C. 3617(b), the court may not remit or mitigate unless the claimant proves the following elements:

- (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith,
- (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and
- (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

no time any knowledge or reason to believe that * * * [the property] was being or would be used in the violation of" specified laws. 18 U.S.C. 3617(b); cf. 21 U.S.C. 334(d)(3). See generally *United States v. Morris*, 10 Wheat. 246, 293-295; *United States v. One 1936 Ford Coach*, 307 U.S. 219.

In sum, under most federal forfeiture statutes, as under the Puerto Rican statute, the seizure and forfeiture are not barred by the fact that the owner or lessor of property was neither aware of nor involved in the unlawful utilization of the property by the one to whose custody or control the property had been entrusted. However, under nearly all federal forfeiture statutes, administrative relief from the forfeiture is available to "innocent" owners of the property.

B. THIS COURT HAS FREQUENTLY UPHOLD THE CONSTITUTIONALITY OF STATUTES PROVIDING FOR FORFEITURE OF PROPERTY NOTWITHSTANDING THE "INNOCENCE" OF THE OWNER OF THE PROPERTY

This Court has frequently considered and rejected the contention that the application of forfeiture laws to the property of an owner who was not aware of or involved in the act subjecting the property to forfeiture results in a deprivation of property without due process or a taking of property without just compensation. *E.g.*, *Harmony v. United States (Brig Malek Adhel)*, 2 How. 210, 233-235; *Dobbins's Distillery v. United States*, *supra*; *J.W. Goldsmith Jr.-Grant Co. v. United States*, 254 U.S. 505; *United States v. One Ford Coupe*, 272 U.S. 321; *Van Oster v.*

Kansas, 272 U.S. 465; cf. *United States v. One 1970 Buick Riviera*, 463 F. 2d 1168 (C.A. 5), certiorari denied *sub nom. Nat'l Am. Bank of New Orleans v. United States*, 409 U.S. 980; *United States v. One 1967 Ford Mustang*, 457 F. 2d 931 (C.A. 9), certiorari denied *sub nom. Bank of Am. Nat'l Trust & Sav. Ass'n v. United States*, 409 U.S. 850. But cf. *United States v. Stowell, supra*, 133 U.S. at 19-20 (forfeiture of mortgaged land used for illegal purposes covers only the mortgagor's interest—equity of redemption—where mortgagee was unaware of the forfeiting act). It is thus "well established" that, in the absence of a statute to the contrary, "property may be seized and statutorily forfeited without payment of any compensation even though its owner may not have engaged in any conduct which may be characterized as criminal or wilfully negligent." *McKeehan v. United States*, 438 F. 2d 739, 742 (C.A. 6).

The rationale of these decisions is that it is neither unreasonable nor constitutionally impermissible for a legislature to impose, in effect, strict or absolute liability upon owners of property, with respect to persons to whom they lend, lease, sell or otherwise entrust their property, just as courts and legislatures have imposed strict liability without fault upon those who engage in certain activities. *E.g., New York Cent. R.R. v. White*, 243 U.S. 188, 204; *Exner v. Sherman Power Constr. Co.*, 54 F. 2d 510, 512-515 (C.A. 2). Thus, "it may be said, that Congress interposes the care and responsibility of [the owner] * * * in aid of the prohibitions of the law and its punitive provisions." *J. W. Gold-*

smith, Jr.-Grant Co. v. United States, supra, 254 U.S. at 510.

As this Court pointed out in *Van Oster v. Kansas, supra*, 272 U.S. at 467-468:

It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it. Much of the jurisdiction in admiralty, so much of the statute and common law of liens as enables a mere bailee to subject the bailed property to a lien, the power of a vendor of chattels in possession to sell and convey good title to a stranger, are familiar examples. They have their counterpart in legislation imposing liability on owners of vehicles for the negligent operation by those entrusted with their use, regardless of a master-servant relation. * * * They suggest that certain uses of property may be regarded as so undesirable that the owner surrenders his control at his peril. The law thus builds a secondary defense against a forbidden use and precludes evasions by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the alleged innocent owner. So here the legislature, to effect a purpose clearly within its power, has adopted a device consonant with recognized principles and therefore within the limits of due process.²⁰

²⁰ The legislative power to impose conditions or potential liabilities upon the continued possession or use of a type of property is but an adjunct of the recognized power to prohibit such possession or use altogether. See, e.g., *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 156-157.

Congress has, moreover, made discriminating legislative judgments in imposing on property owners liability for forfeitures. Thus, under the principal federal forfeiture statutes, a vehicle or vessel used as a common carrier is not subject to forfeiture unless the owner or person in charge of it for the owner is "a consenting party or privy" to the unlawful action which would otherwise subject the vehicle or vessel to forfeiture. *E.g.*, 19 U.S.C. 1594; 21 U.S.C. 881(a)(4)(A); 49 U.S.C. 782. In other words, although the owner is made strictly liable for the actions of persons placed in charge of the vehicle or vessel, the unilateral illegal activities of a passenger would not subject the vehicle or vessel to forfeiture. Compare *J. W. Goldsmith, Jr.-Grant Co. v. United States*, *supra*, 254 U.S. at 512; *United States v. One Ford Coupe*, *supra*, 272 U.S. at 333.

In some of the provisions for remission or mitigation of forfeitures, Congress has explicitly imposed an obligation on property owners to investigate the background of those to whom they entrust their property. *E.g.*, 18 U.S.C. 3617(b); see *United States v. One 1936 Ford Coach*, *supra*. In addition to such investigation, a property owner may also protect against the risk of forfeiture by procuring insurance or by requiring indemnification by the persons to whom the property is entrusted. Indeed, in the present case the possibility of "forfeiture" or any other "loss imposed by law" was not only anticipated by Pearson but was also explicitly covered by a provision of the lease requiring the lessees to hold Pearson harmless from such hazards (App. 9).

C. THIS COURT'S DECISION IN *COIN & CURRENCY* DID NOT OVERRULE ANY PRIOR DECISIONS UPHOLDING THE VALIDITY OF FORFEITURE STATUTES

In holding that application of the Puerto Rican forfeiture statute under the circumstances of this case would deprive Pearson of property without due process or just compensation, the district court concluded that the above-cited decisions of this Court "have since been overruled" by *United States v. United States Coin & Currency*, *supra*. The portion of the *Coin & Currency* opinion relied upon, however, was dictum as regards the issues in this case.

The question in *Coin & Currency* was whether forfeiture proceedings under 26 U.S.C. 7302 could be regarded as sufficiently "criminal" in nature to be subject to the prohibitions of the Fifth Amendment concerning compelled self-incrimination.²¹ With respect to the government's contention that the guilt of the owner of the forfeitable property is irrelevant under 26 U.S.C. 7302, the opinion in *Coin & Currency* expressly acknowledged that "centuries of history support the Government's claim that forfeiture statutes similar to this one have an extraordinarily broad scope" (401 U.S. at 719) and specifically disavowed any reconsideration of the question whether a forfeiture statute as broad as 26 U.S.C. 7302 is consistent with the Fifth Amendment's due process and just compensation provisions. *Id.* at 720-721.

²¹ This Court's subsequent decision in *One Lot Emerald Cut Stones v. United States*, *supra*, makes clear that *Coin & Currency* did not hold that *all* forfeiture proceedings should be regarded as criminal in nature.

In short, *Coin & Currency* did not involve the issue raised here and certainly did not overrule this Court's long line of decisions sustaining the constitutionality of statutes like the Puerto Rican forfeiture statute involved in this case.

D. FORFEITURE STATUTES IMPOSING STRICT LIABILITY UPON PROPERTY OWNERS ARE STILL A VALID MEANS TO ACHIEVE IMPORTANT GOVERNMENTAL ENDS

Apart from their historical acceptance, forfeiture statutes are, as previously indicated (see pp. 6-8, 32-34, *supra*), supportable as a constitutionally permissible means of regulation and of implementation of various important public purposes. As such, they can be sustained whether or not they contain any provision for remission or mitigation in particular cases of hardship or extenuating circumstances. In any event, where such provisions do exist, they must surely be taken into account in laying to rest any doubts that might otherwise exist as to the constitutionality of forfeiture statutes as applied in particular circumstances.

Thus, in *Coin & Currency* this Court viewed the forfeiture statutes "in their entirety," including the provisions for remission and mitigation. 401 U.S. at 721. After noting that the Secretary of the Treasury was authorized to return seized property under 19 U.S.C. 1618 "upon such terms and conditions as he deems reasonable and just," the Court further observed that "[i]t is not to be presumed that the Secretary will not conscientiously fulfill this trust, and

the courts have intervened when the innocent petitioner's protests have gone unheeded" (*ibid.*).²² Compare the congressional observation, in extending to other areas the application of customs remission and mitigation procedures in effect since 1790 (see 1 Stat. 122), that "[t]hroughout the whole period of enforcement no undue hardship has been charged against the customs forfeiture laws for the reason that * * * provision is made for the remission or mitigation of forfeitures when alleviating circumstances exist." H. Rep. No. 1054, *supra*, at p. 3.

Finally, as this Court similarly indicated in *Yakus v. United States*, 321 U.S. 414, where a procedure is available to avoid or ameliorate a deprivation of property that might otherwise occur, one cannot contend that constitutional rights are infringed, except upon a

²² The Court cited *United States v. Edwards*, 368 F. 2d 722 (C.A. 4) and *Cotonificio Bustese, S.A. v. Morgenthau*, 121 F. 2d 884 (C.A.D.C.). In general, the courts have held that the decision of the Secretary or the Attorney General on a petition for remission or mitigation is a matter of "discretion" not subject to judicial review. *E.g.*, *United States v. One 1970 Buick Riviera*, *supra*; *United States v. One 1967 Ford Mustang*, *supra*. Although the statutory standard and grant of discretion are broad, so that judicial review would ordinarily be inappropriate or stringently circumscribed (compare *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410-413), we do not contend that the courts are totally disabled from correcting manifest injustice in an extreme case. That decisions concerning remission and mitigation of forfeitures are not inherently unsuited to judicial review is suggested by the fact that some statutes provide for remission or mitigation by the court decreeing the forfeiture (see, *e.g.*, p. 30, *supra*, n. 19, and such judicial determinations have been subject to appellate review by this Court. *E.g.*, *United States v. One 1936 Ford Coach*, *supra*.

showing that the procedure is incapable of affording due process. That cannot be said of forfeiture statutes containing provisions for remission or mitigation.²³

E. IN VIEW OF THE PROVISIONS OF THE LEASE, PEARSON LACKS STANDING TO CLAIM THAT THE FORFEITURE DEPRIVED IT OF PROPERTY WITHOUT DUE PROCESS OR JUST COMPENSATION

Even if Pearson has standing to assert any claim in the forfeited property under Puerto Rican law,²⁴ and

²³ If this were a federal case, the vessel would presumably be subject to forfeiture under 21 U.S.C. 881(a)(4), under which Pearson's "innocence," while not a bar to forfeiture (cf. 21 U.S.C. 881 (a)(4)(A)), would be relevant to administrative action on a petition for remission or mitigation. 21 U.S.C. 881(d); see 19 U.S.C. 1618. See generally pp. 28-29, *supra*, n. 18. We are not in a position to represent to the court what the position of the Secretary of Treasury or the Attorney General would be on such a petition filed by a person in Pearson's situation, because certain pertinent facts are not known, including the information Pearson either had, sought or should have known about the lessees' background, the efforts made or to be made by Pearson to enforce the lessees' obligations under the lease, and the likelihood of recovery through such efforts.

²⁴ We do not treat the jurisdictional question, which has been briefed by the Commonwealth (Br. 14-15). The Commonwealth notes that under the law of Puerto Rico, an interested party has 15 days from notification of the forfeiture to institute court proceedings. Here Pearson by its own admission knew of the forfeiture by October 19, 1972 (App. 3), but did not seek judicial relief until November 6, 1972. On the other hand, if it is required that it be formally notified by the Commonwealth, which has not yet occurred (App. 24), Pearson may not yet be barred from pursuing a remedy in court. Compare *Menkarell v. Bureau of Narcotics*, 463 F. 2d 88 (C.A. 3); *Jaekel v. United States*, 304 F. Supp. 993 (S.D.N.Y.). The record does not reveal when the Commonwealth became aware of Pearson's existence or relationship to the property, nor whether it should have been able to notify Pearson of the seizure and forfeiture. How-

even if substantial constitutional questions might be raised by application of a forfeiture statute against an owner or lessor wholly innocent of involvement in the forfeiting act, it is doubtful that Pearson can in the circumstances of this case be said to have been deprived of its property by operation of the forfeiture statute.

Under the lease, Pearson was entitled to receive the agreed rentals and to recover possession of the vessel or to recover its value, but not both (App. 10-11). Neither the lessees' default nor the forfeiture terminated the lessees' contractual obligation to make Pearson whole. If they were to satisfy that obligation (voluntarily or pursuant to litigation), Pearson would be denied nothing by the forfeiture.²⁵

The major impact of the forfeiture, whether it be "penal" or otherwise in nature, is thus not on Pearson but on the lessees.²⁶ While Pearson was technically the legal owner of the vessel, its interest in it was essentially reversionary; the vessel served as security for the debt owed to it by the lessees. The forfeiture did not extinguish that debt since, despite losing posses-

ever, the district court stated that it was not disposed to rule on this record that the Commonwealth "did not have reason to believe that notice to the owner was, in fact, given" (App. 36).

²⁵ The record does not disclose whether or to what extent Pearson has recovered or may recover from the lessees.

²⁶ This fact would have been even more dramatically apparent if the forfeiture had occurred near the end of the five year term of the lease, at which time the lessees would have made virtually full payment and would have been entitled, by paying \$1.00, to divest Pearson of the technical status as "lawful owner."

sion of the vessel, the lessees are still liable under the lease. It is this continuing liability, in fact, which gives the forfeiture statute its impact. See *United States v. One 1941 Pontiac Sedan*, 83 F. Supp. 999, 1000-1001 (S.D.N.Y.) ; H. Rep. No. 1054, *supra*, at pp. 2-3. When a forfeited vehicle or vessel is remitted to a lienholder who had entrusted it to another (*e.g.*, bailee, lessee, conditional vendee) who used it for wrongdoing, the latter's obligation is thereby lessened and perhaps satisfied, and his only loss is his equity in the vehicle or vessel—frequently minimal due to the property's depreciation. Pearson's real contention is thus that its claim against the vessel as satisfaction of the lessees' debt should be afforded legal precedence over the Commonwealth's forfeiture claim. It is not a violation of the Fifth Amendment to deny Pearson that precedence.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted.

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APPENDIX

EXAMPLES OF FEDERAL FORFEITURE STATUTES

1. TITLE 18

Sections 3113 and 3617 of the Judiciary and Judicial Act of Procedure of June 25, 1948, 62 Stat. 820, 840, as amended, 18 U.S.C. 3113, 3617, provide as follows:

§ 3113. LIQUOR VIOLATIONS IN INDIAN COUNTRY

If any superintendent of Indian affairs, or commanding officer of a military post, or special agent of the Office of Indian Affairs for the suppression of liquor traffic among Indians and in the Indian country and any authorized deputies under his supervision has probable cause to believe that any person is about to introduce or has introduced any spirituous liquor, beer, wine or other intoxicating liquors named in sections 1154 and 1156 of this title into the Indian country in violation of law, he may cause the places, conveyances, and packages of such person to be searched. If any such intoxicating liquor is found therein, the same, together with such conveyances and packages of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and one-half to the use of the United States. If such person be a trader, his license shall be revoked and his bond put in suit.

Any person in the service of the United States authorized by this section to make searches and seizures, or any Indian may take and destroy any ardent spirits or wine found in the Indian country, except such as are kept or

used for scientific, sacramental, medicinal, or mechanical purposes or such as may be introduced therein by the Department of the Army. In all cases arising under this section and sections 1154 and 1156 of this title, Indians shall be competent witnesses.

§ 3617. REMISSION OR MITIGATION OF FORFEITURES
UNDER LIQUOR LAWS; POSSESSION PENDING TRIAL.

(a) *Jurisdiction of court*

Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(b) *Conditions precedent to remission or mitigation*

In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforce-

ment of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

(c) Claimants first entitled to delivery

Upon the request of any claimant whose claim for remission or mitigation is allowed and whose interest is first in the order of priority among such claims allowed in such proceeding and is of an amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to him; and, upon the joint request of any two or more claimants whose claims are allowed and whose interests are not subject to any prior or intervening interests claimed and allowed in such proceedings, and are of a total amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to such of the joint requesting claimants as is designated in such request. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the United States. In all other cases the court shall order disposition of such vehicle or aircraft as provided in sections 304f-304m of Title 40, and if such disposition be by public sale, payment from the proceeds thereof, after satisfaction of all such expenses, of any such claim in its order of priority among the claims allowed in such proceedings.

(d) Delivery on bond pending trial

In any proceeding in court for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-

revenue laws relating to liquor, the court shall order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties approved by the court, and deliver to the court, a bond to the United States for the payment of a sum equal to the appraised value of such vehicle or aircraft. Such bond shall be conditioned to return such vehicle or aircraft at the time of the trial and to pay the difference between the appraised value of such vehicle or aircraft as of the time it shall have been so released on bond and the appraised value thereof as of the time of trial; and conditioned further that, if the vehicle or aircraft be not returned at the time of trial, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or aircraft. Notwithstanding this subsection or any other provisions of law relating to the delivery of possession on bond of vehicles or aircraft sought to be forfeited under the internal-revenue laws, the court may, in its discretion and upon good cause shown by the United States, refuse to order such delivery of possession.

2. TITLE 19

Sections 594, 596, and 618 of the Tariff Act of 1930, 46 Stat. 754, as amended, 19 U.S.C. 1594, 1595a and 1618, provide as follows:

§ 1594. LIBEL OF VESSELS AND VEHICLES

Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a com-

mon carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto.

§ 1595a. FORFEITURES; PENALTY FOR AIDING UNLAWFUL IMPORTATION

(a) Except as specified in the proviso to section 1594 of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, shall be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

§ 1618. REMISSION OR MITIGATION OF PENALTIES

Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitiga-

tion of such fine, penalty, or forfeiture, the Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a Commission to any customs officer to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

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3. TITLE 21

Section 511(a) of Title II of the Comprehensive Drug Abuse Prevention and Control Act of October 27, 1970, 84 Stat. 1274, as amended, 21 U.S.C. 881, provides as follows:

§ 881. FORFEITURES

(a) *Property subject*

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended

for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

4. TITLE 26

Sections 5688, 7301, and 7302 of the Internal Revenue Code of 1954, 68A Stat. 867, as amended, 26 U.S.C. 5688, 7301 and 7302, provide as follows:

§ 5688. DISPOSITION AND RELEASE OF SEIZED
PROPERTY*

* * *

(c) *Release of seized vessels or vehicles by
courts*

Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof. As used in this subsection, the word "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air.

§ 7301. PROPERTY SUBJECT TO TAX

(a) *Taxable articles*

Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed,

*This section is applicable only to beer and brewing violations.
See also 26 U.S.C. 5611.

deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(b) Raw materials

All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

(c) Equipment

All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a) may also be seized, and shall be forfeited to the United States.

(d) Packages

All property used as a container for, or which shall have contained, property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

(e) Conveyances

Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging or property described in subsection (a), may also be seized, and shall be forfeited to the United States.

§ 7302. PROPERTY USED IN VIOLATION OF INTERNAL REVENUE LAWS

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

5. TITLE 28

Section 2465 of the Judiciary and Judicial Procedure Act of June 25, 1948, 62 Stat. 975, as amended, 28 U.S.C. 2465, provides as follows:

§ 2465. RETURN OF PROPERTY TO CLAIMANT; CERTIFICATE OF REASONABLE CAUSE; LIABILITY FOR WRONGFUL SEIZURE

Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such

case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution.

6. TITLE 49

Sections 1, 2 and 4 of the Act of August 9, 1939, 53 Stat. 1291, as amended, 49 U.S.C. 781, 782, and 784, provide as follows:

§ 781. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFTS; CONTRABAND ARTICLE DEFINED

(a) It shall be unlawful (1) to transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, or aircraft; (2) to conceal or possess any contraband article in or upon any vessel, vehicle, or aircraft, or upon the person of anyone in or upon any vessel, vehicle, or aircraft; or (3) to use any vessel, vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(b) As used in this section, the term "contraband article" means—

(1) Any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith; or which has been acquired or is possessed, sold, transferred, or offered for sale, in violation of any laws of the United States dealing therewith; or which has been acquired by theft, robbery, or burglary and carried or transported within any Territory, possession, or the District of Columbia, or from any State, Territory, possession, the District of Columbia, or the Canal Zone, to another State, Territory, possession, the District of Columbia, or the Canal Zone; or which does

not bear appropriate tax-paid internal-revenue stamps as required by law or regulations;

(2) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearms Act or any regulation issued pursuant thereto; or

(3) Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used, or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security.

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§ 782. SEIZURE AND FORFEITURE

Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 781 of this title, or in, upon, by means of which any violation of said section has taken or is taking place, shall be seized and forfeited: *Provided*, That no vessel, vehicle, or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be forfeited under the provisions of this chapter unless it shall appear that (1) in the case of a railway car or engine, the owner, or (2) in the case of any other such vessel, vehicle, or aircraft, the owner or the master of such vessel or the owner or conductor, driver, pilot, or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privy thereto: *Provided further*, That no vessel, vehicle, or aircraft shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession

thereof in violation of the criminal laws of the United States, or of any State.

§ 784. APPLICATION OF RELATED LAWS

All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels and vehicles for violation of the customs laws; the disposition of such vessels and vehicles or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels and vehicles under the customs laws shall be performed with respect to seizures and forfeitures of vessels, vehicles, and aircraft under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury.